IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13-06-2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.13399 of 2015
And
M.P.Nos.1 and 2 of 2015

P.Chelliah ... Petitioner

Versus

The Principal Secretary/
Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk,
Chennai-600 005. ... Respondent

PRAYER: Writ petition is are filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, after calling for the concerned records from the respondent, quash the Charge Memo dated 15.4.2015 bearing No.CD1/36939/2012 of the respondent and consequently direct the respondent to permit the petitioner to retire from the service from 30.4.2015 with all the terminal benefits.

For Petitioner : Mr.Balan Haridas

For Respondent : No Appearance

ORDER

The charge memo issued by the respondent in proceedings dated 15.4.2015 is under challenge in this writ petition.

2. The writ petitioner was initially appointed as a Junior Assistant and promoted to the post of Assistant, Assistant Commercial Tax Officer, Commercial Tax Officer and as Assistant Commissioner with effect from 10.3.2014. At the time of filing of the writ petition, the writ petitioner was holding the post of Assistant Commissioner of Commercial Taxes, Department Representative at Virudhunagar.

3. The Principal Secretary/Commissioner of Commercial Taxes issued a charge memo against the writ petitioner under Rule 17

(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, formulating the following charges:

> "Charge No.1:
>
> You, Thiru P.Chelliah, while holding the posts of CTO (Main) and CTO (Addl.) from (13.8.2010 to 30.6.2013) and the post of AC (CT)(FAC) from (14.3.2014 to 12.8.2014) in Virudhunagar III Assmt. Circle, have issued wrong refunds to an extent of Rs.47,79,906/- to fifteen works contractors by way of seventy six refund vouchers, without verifying the monthly Form I returns filed by the works contractors with reference to purchase turnover reported in Form I filed along with the monthly return for any under reporting of purchases made with a mala fide intention to suppress the corresponding deemed sales turnover. Further, you have not ascertained the correctness of the turnovers reported in the returns and passed self-assessment orders/deemed assessment orders and refunded the TDS amounts mentioned in the TDS certificates.
>
> Thus, due to your negligence of duty, and lethargic attitude in the processing and issuing of refunds, heavy loss of revenue to the tune of Rs.47,79,906/- have caused to the State Exchequer.
>
> Charge No.2:
>
> You, Thiru P.Chelliah, while holding the post of CTO (Main) and CTO (Addl.) from (13.8.2010 to 30.6.2013), and the post of AC (CT)(FAC) from (14.3.2014 to 12.8.2014) in Virudhunagar III Assmt. Circle, by the aforesaid lapses had thus, acted with negligence in work with a mala fide intention and failed to maintain absolute integrity and devotion to duty, and had thereby acted in a manner unbecoming of a Government Servant violating Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973."

4. On a perusal of the impugned charge memo, it is in the prescribed format and Annexure-I denotes statement of charges framed against the writ petitioner. Annexure-II provides statement of allegations namely imputations of misconduct or

misbehaviour in support of the charges. Annexure-III provides list of documents and form of questionnaire is also provided along with the impugned charge memo. Thus, there is no infirmity, as such, in respect of the charge memo issued against the writ petitioner.

5. The learned counsel, appearing on behalf of the writ petitioner, mainly raised a contention that the writ petitioner in his capacity as Assistant Commissioner of Commercial Taxes exercised his powers under the provisions of the Act and the Rules. Thus, he had exercised the quasi judicial powers and such exercise of quasi judicial powers, cannot be questioned nor constitute a ground for framing of charges under the Discipline and Appeal Rules. Such a contention generally raised, cannot be accepted at the outset. Whether there is any other materials available on record to show that the quasi judicial authorities have not acted in consonance with the Act and the Rules and not acted in the interest of public or in a prudent manner, then the Disciplinary Authorities are bound to initiate disciplinary proceedings against such Officers. There is no total or absolute exemption of quasi judicial authorities from the provisions of the Discipline and Appeal Rules. Such an exemption is not contemplated at all. Every public servants exercising the statutory powers under a Statute is not only accountable and should exercise the powers in a judicious and prudent manner. All actions of such public servants exercising the quasi judicial power must be in the interest of public. If any deviations or any violations are found, then there is no error in initiating the disciplinary proceedings against such quasi judicial authorities.

6. On a perusal of the charges, undoubtedly, certain allegations are made against the writ petitioner which are all serious in nature. Thus, it is for the writ petitioner to defend the case before the enquiry proceedings in the manner prescribed. If at all the writ petitioner has exercised his quasi judicial powers in accordance with the Act and the Rules, then it is for him to defend his case by submitting documents and by adducing evidences, instead, charge memo cannot be quashed at the preliminary stage and in the interest of public. An enquiry is to be conducted to find out if any public loss caused to State Exchequer made under Revenue Generating Departments are accountable not only to the Department but also to the public in general. In the Revenue Generating Departments, there are large quantum of monetary involvements are there. Therefore, exercise of such quasi judicial powers are vital and imminent for the purpose of running the administration. This being the principles to be followed, this Court is of an opinion that the charge memo at this point of time cannot be quashed at all.

7. No writ against a charge memo can be filed in a routine manner. Nor this Court can entertain the writ petition in a casual way. No writ can be entertained against a charge memo unless the charge memo has been issued by the authority having jurisdiction or or an allegation of mala fides are raised or if the same is in violation of statutory rules in force. Even in case of raising an allegation of mala fides, the authority against whom such an allegation is raised to be impleaded as party respondent in the writ proceedings in his personal capacity. In the absence of any one of the legal grounds, no writ can be entertained. The judicial review against the charge memo is certainly limited. The disciplinary authority, on initiation of the disciplinary proceedings, shall be allowed to continue the proceedings in all respects and conclude the same within the reasonable period of time.

8. It is the duty of the disciplinary authority to ensure that the disciplinary proceedings initiated are concluded within the reasonable period. In the event of longer delay, the same will affect the service prospects of the employees also. Pending disciplinary proceedings has advantage for promotion and for settlement of terminal benefits. Such being the conclusions, the authorities competent shall initiate disciplinary proceedings against the Government employees, must ensure that such disciplinary proceedings are concluded within the reasonable period of time by providing opportunity to the delinquent officials.

9. Intermittent intervention in the disciplinary proceedings are not preferable and only on exceptional circumstances, the Courts can interfere in the disciplinary proceedings during the intermittent period. All the departmental proceedings initiated against the delinquent employees shall be allowed to be completed in all respects and a logical conclusion to be reached. The very purpose and object and of TNCS (D&A) Rules are to punish the corrupt officials who have committed misconducts, while performing their duties and responsibilities.

10. The Hon'ble Supreme Court of India in the case of Union of India and others Vs. Upendra Singh, reported in (1994) 3 SCC 357 and the paragraph 6 which is extracted hereunder:

> "6.In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction

to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicialreview, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum- Assessing Authority, Kamal v. Gopi Nath & Sons. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p. 317, para 8)

> "Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

11. Judicial review of charge memo is very much limited and the Courts are to be cautious while intervening with the charge memo. Intermittent interventions against the charge memo are certainly not preferable and the Court can entertain a writ only on exceptional circumstances and not otherwise. The other grounds raised by the writ petitioner in relation to the merits regarding the allegations and his innocence in relation to the charges, cannot be considered in this writ petition and it is left open to the writ petitioner to make use of the opportunities under the Rules and defend his case before the enquiry proceedings, to be conducted.

12. Government servants play a significant role in running theadministration of the country. They are important constituents of the administrative set up of the nation. They are pillars of the Government departments on whose shoulders the responsibility to implement the Government policies lies. They provide public services to the citizens at the grass root level and in the same way, they forward grievances of the public, their representations and demands to higher ups for their effective resolution. The Government employees have different work culture and responsibilities as compared to their counterparts in private sector. They are smartly paid and have some kind of perquisites given to them but at the same time, they have heavy responsibilities towards the Government in particular and public in general. However, when the Government servants deviate from the established rules of conduct, the departmental disciplinary proceedings will be initiated. It is the need of the hour to analysewhetherconducting departmental proceedings and criminal proceedings would amount to double jeopardy or such simultaneous proceedings are to be continued simultaneously.

13. In respect of the charge against the quasi judicial orders, the Hon'ble Supreme Court of India held in the case of Union of India and others Vs. A.N.Saxena, reported in AIR 1992 SC 1233 and the relevant paragraphs 6 and 8 are extracted hereunder:

> "6. In the first place, we cannot, but confess out astonishment at the impugned order passed by the tribunal. In a case like this the tribunal, we feel, should have been very careful before granting stay in a disciplinary proceeding at an interlocutory stage. The imputations made against the respondent were extremely serious and the facts alleged, if proved, would have established misconduct and misbehaviour. It is surprising that without even a counter

being filed, at an interim stage, the tribunal without giving any reasons and without apparently considering whether the memorandum of charges deserved to be enquired into or not, granted a stay of disciplinary proceedings as it has done. If the disciplinary proceedings in such serious matters are stayed so lightly as the tribunal appears to have done, it would be extremely difficult to bring any wrong-doer to book. We have, therefore, no hesitation in setting aside the impugned order of the tribunal and we direct that the disciplinary proceedings against the respondent in terms of the charge-sheet dated March 13, 1989 shall be proceeded with according to law. In fact, we would suggest that disciplinary proceedings should be proceeded with as early as possible and with utmost zeal.

8. In our view, an argument that no disciplinary action can be taken in regard to actions taken or purported to be done in the course of judicial or quasi-judicial proceedings is not correct. It is true that when an officer is performing judicial or quasi-judicial functions disciplinary proceedings regarding any of his actions in the course of such proceedings should be taken only after great caution and a close scrutiny of his actions and only if the circumstances so warrant. The initiation of such proceedings, it is true, is likely to shake the confidence of the public in the officer concerned and also if lightly taken likely to undermine his independence. Hence the need for extreme care and caution before initiation of disciplinary proceedings against an officer performing judicial or quasijudicial functions in respect of his actions in the discharge or purported to discharge his functions. But it is not as if such action cannot be taken at all. Where the actions of such an officer indicate culpability, namely, a desire to oblige himself or unduly favour one of the parties or an improper motive there is no reason why disciplinary action should not be taken.”

14. In the case of Union of India and Others Vs. K.K.Dhawan, reported in (1993) 2 SCC 56, His Lordship Justice S.Mohan, while speaking on behalf of the Hon'ble Three Judges Bench of the Supreme Court of India, held as under:

> “22.The Tribunal has chosen to rely on Civil Appeal Nos. 4986- 87/90. The order in that case clearly shows the ultimate conclusion was that the charge framed against the delinquent officer had not been established. In support of that conclusion, it was observed as under
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> "We are also of the view that the action taken by the appellant was quasi-judicial and should not have formed the basis of disciplinary action."
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> 23.We do not think where to buttress the ultimateconclusion, this observation was made, that could ever be construed as laying down the law that in no case disciplinary action could be taken if it pertains to exercise of quasi-judicial powers.
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> 27.This dictum fully supports the stand of the appellant. There is a great reason and justice for holding in such cases that the disciplinary action could be taken. It is one of the cardinal principles of administration of justice that it must be free from bias of any kind.
>
> 28.Certainly, therefore, the officer who exercises judicial or quasi-judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith ordevotion to duty;

(ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii) if he has acted in a manner which is unbecoming of a government servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party-,

(vi) if he had been actuated by corrupt motive however, small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great."

15. The Hon'ble Supreme Court of India, in Paragraph 28 cited above, categorically enumerated the circumstances under which the disciplinary action can be taken in the cases where the authorities exercise the quasi judicial powers. This Court is of the clear opinion that the case on hand falls under these categories and therefore, there is no error on the part of the respondent in initiating departmental proceedings against the writ petitioner. Thus, the ground raised by the writ petitioner that he was exercising the quasi judicial power, cannot be of no avail to him and the contentions in this regard deserves to be rejected at the outset.

16. In this view of the matter, the writ petitioner is directed to submit his explanations and participate in the process of enquiry. In such an event, the respondent is directed to proceed with the enquiry proceedings and conclude the same at the earliest possible, preferably within a period of six months from the date of receipt of a copy of this order. It is made clear that the writ petitioner should co-operate for the conclusion of the enquiry proceedings. If there is any non-co-operation, the same also shall be recorded by the disciplinary authority in the disciplinary proceedings.

17. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

svn
To

The Principal Secretary/
Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk,
Chennai-600 005.

+1cc to Mr.Balan Haridas, Advocate Sr.37092

W.P.No.13399 of 2015

srg 26/06/2018